Supreme Court, U.S.
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No. 95-972

In The

Supreme Court of the United States

October Term, 1995

ROSE ANN ROTHENBUSCH,

Petitioner,

v.

FORD MOTOR COMPANY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner waived any objection relating to her first question presented; and if not, whether a plaintiff in a Title VII hostile environment sexual harassment case is required to prove that Respondent, her employer, intentionally discriminated against her because of gender/sex in order to hold Respondent liable for harassment allegedly committed against Petitioner by her estranged husband, a fellow employee?

2. Whether Petitioner waived any objection to the trial court's failure to instruct the jury that the discriminatory intent of the harasser could be proven using a mixed-motives analysis; and if not, whether the burdens of proof established by *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), for occasions when an employment decision resulted from the presence of legitimate and illegitimate motives, apply in cases of hostile environment sexual harassment?

3. Whether Petitioner waived any objection to the trial court's instruction on "comparable" employees; whether this Court should grant certiorari to resolve an alleged conflict between Sixth Circuit decisions regarding disparate treatment standards for determining if employees are comparable; and if so, whether the trial court's instruction was erroneous?

LISTING OF PARENT COMPANIES AND SUBSIDIARIES PURSUANT TO RULE 29.1

Respondent, Ford Motor Company, has no parent corporation. The following is a list of domestic and foreign companies in which Ford Motor Company owns an equity interest of at least 10% but less than 100%:

Autolatina America, Inc.
Ford Holdings
Great Mall of the Bay Area Management Company

Argentina
- Autolatina Argentina S.A.
- Invercred Compania Financiera S.A.

Australia
- Ford Motor Company of Australia Limited

Belgium
- Ford Credit N.V.
- Ford Motor Company (Belgium) N.V.

Brazil
- Apolo – Administradora de Bens S/C Ltda.
- Autolatina S.A.

Canada
- TCG, International

Denmark
- Ford Motor Company A/S

Finland
- Oy Ford Ab

Germany
- Ford Werke-Aktiengesellschaft & Co. Leasing KG

Holland
- Ford Nederland B.V.

LISTING OF PARENT COMPANIES AND SUBSIDIARIES PURSUANT TO RULE 29.1 – Continued

Netherlands
Ford Credit B.V.

Norway
Ford Motor Norge A.S.

New Zealand
Ford Motor Company of New Zealand Limited

Singapore
Ford Motor Company Private Limited

South Africa
South African Motor Corporation, Ltd. (SAMCOR)

Sweden
Ford Motor Company Aktiebolag

Switzerland
Ford Motor Company (Switzerland) S.A.

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent Ford Motor Company respectfully requests that this Court deny the Petition for a Writ of Certiorari seeking review of the Opinion of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit and the decision and opinion of the United States District Court for the Southern District of Ohio are unreported and are printed in Petitioner's Appendix.

COUNTERSTATEMENT OF THE CASE

Petitioner has selectively presented the facts to downplay the mutual domestic relations battle in which she and her estranged husband, who she met and married while both worked at Ford and who was on the same supervisory level as she, were engaged outside of work and at the Ford plant. They used the Ford plant as their personal battleground over the objection of Ford and despite its reasonable efforts to prevent it. It is this marriage dissolution context which distinguishes this case from most other hostile environment sexual harassment cases.

Petitioner seeks to hold Respondent responsible for not sufficiently siding with her in her war with her

estranged husband who she accused of sexual harassment. Whatever actions her estranged husband committed toward Petitioner, she made a major contribution to the hostility in the workplace. She had him arrested at the plant several times, once just after they separated and once after they had a verbal altercation in the plant cafeteria. She had him arrested numerous other times outside of work. Their domestic problems were heard by various state courts. To Ford employees, she called him a "bastard" and a "son of a bitch" and said he was impotent. Derogatory posters depicting Petitioner's estranged husband as a "jailbird" and a baby crying because she "told him they were through" were posted in the plant. *Rothenbusch v. Ford Motor Co.*, Case No. 93-3943 at 2-3 (6th Cir. July 20, 1995). There was no evidence that any other Ford employee, male or female, complained about or was offended by the environment created by Petitioner and her estranged husband. They focused their hostility on one another only. The other Ford employees saw the situation for exactly what it was – a personal dispute motivated by personal hatred, anger and revenge being fought out in the workplace with words and posters. Ford did not condone any of it, and took reasonable steps to stop it. One day, Petitioner escalated her activities to physical assault. She drove across the plant on a scooter to her estranged husband's work area and, without warning or apparent provocation at the scene, sprayed him in the face with a mace-like chemical weapon. She untruthfully denied this assault, but it was witnessed by third parties. *Id.* at 4; District Court Findings of Fact No. 15. Ford discharged Petitioner for that assault, and later

appropriately disciplined her estranged husband for the two occasions a witness saw him posting a poster.

The first two questions raised by Petitioner are directed at Respondent's failure to guarantee that posters derogatory to her would not be posted in the plant, and if they were, that Ford would discipline her estranged husband whether or not it could prove he was responsible for the postings. Title VII was not designed for these purposes; and even if it was, Petitioner did not prove her case. The third question is directed at the relevance of comparisons for judging disparate treatment.

REASONS WHY THE PETITION SHOULD BE DENIED

A petition for a writ of certiorari "will be granted only when there are special and important reasons therefor." Sup. Ct. R. 10. In cases such as the present one, this normally requires that:

> [A] United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; . . . [or] has decided an important question of federal law which has not been, but should be, settled by this Court.

Sup. Ct. R. 10.1(a), (c). None of the issues raised in the Petition satisfy this Court's stringent requirements for granting a writ of certiorari.

First, Petitioner waived her right to challenge in this Court any of the three questions presented. She did not object to the jury instruction requiring that harassment be

"based on sex" or to the instruction requiring comparisons of only "similarly situated" employees, nor did she object to the lack of an instruction to apply a mixed-motives analysis to her sexual harassment claim. Second, this case is heavily fact dependent, and impacts only the litigants. The jurisprudence of sexual harassment will not be advanced by granting this Petition, because none of the questions presented raises any "special and important reasons" for review by this Court. Third, the Sixth Circuit's decision is not inconsistent with that of any of the other Circuits of the United States Court of Appeals. Finally, reversal of the Sixth Circuit's decision on any one or all of the three grounds raised by Petitioner would not affect the outcome of the case, as the jury found against Petitioner on every other element of her hostile environment sexual harassment and sex discrimination claims, and she has not appealed those findings. Thus, the Petition should be denied.

I. PETITIONER WAIVED HER RIGHT TO OBJECT TO THE "PERSONAL ANIMOSITY" JURY INSTRUCTION, THE SIXTH CIRCUIT PROPERLY UPHELD THE INSTRUCTION, AND THERE IS NO CONFLICT IN THE COURT OF APPEALS ON THIS ISSUE.

Petitioner was not required to prove the discriminatory intent of a "co-worker harasser," as her first question presented suggests. The instruction objected to merely required Petitioner to prove that the alleged harassment was "based on sex," and concluded that: "Personal animosity is not the equivalent of sexual harassment and is not proscribed by law." Petitioner waived any objection

to this instruction. In fact, as the Sixth Circuit noted, Petitioner's counsel:

> [s]eemed to agree with the "personal animosity" aspect of the charge. He stated: "I don't have any problem with the statement that 'personal animosity is not the equivalent of sexual harassment as proscribed by law,' in that general concept."

(Court of Appeals Opinion at 6 n.5) Now Petitioner is barred from having the instruction reviewed by this Court. Fed. R. Civ. P. 51; *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 815 (1985) (jury instruction question not preserved for review unless petitioner objects at trial with sufficient specificity to satisfy Rule 51). There was no instruction about intent, no special verdict about it, and no discussion about it by the Court of Appeals. The importance of the intent of Petitioner's estranged husband was not an issue before the jury and was not properly preserved for this Court.

Even if Petitioner's first question could be considered by the Court, there is no reason for such consideration. Whether Petitioner's estranged husband was responsible for posting all of the offensive posters or, if so, whether he intended to harass her because of her gender/sex status rather than because of his personal animosity due to their failed marriage, such does not prove that Respondent was responsible for illegal gender/sex harassment. Respondent's responsibility under the law does not turn on Petitioner's estranged husband's intent. The jury found that Respondent did not sexually harass or permit harassment against Petitioner because of

gender/sex, regardless of any action or motive by her estranged husband.

Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an *employer* . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(1) (emphasis added). In *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 65-66 (1986), this Court held that sexual harassment is a form of sex discrimination prohibited by Title VII, and that "a plaintiff may establish a violation of Title VII by proving that discrimination *based on sex* has created a hostile or abusive work environment." An employer that creates or condones a work environment which is discriminatorily hostile or abusive to members of a protected class, such as women, is thereby discriminating "with respect to . . . terms [and] conditions . . . of employment." *Id.* at 66. The essence of Title VII, indeed of all employment protective laws that prohibit discrimination or retaliatory conduct, proscribes employer conduct "because of" protected status, regardless of the nature of the conduct used for the harassment. It is the intent or motive of the employer that is the cause or reason that moves the will and induces or fails to induce action which may be proscribed. As this Court recently affirmed in *Hazen Paper Co. v. Biggins*, 113 S. Ct. 1701, 1708 (1993):

> Disparate treatment . . . is the most easily understood type of discrimination. *The employer* simply treats some people less favorably than others because of their . . . [protected characteristics]. *Proof of discriminatory motive is critical,*

> although it can in some situations be inferred from the mere fact of differences in treatment . . .
>
> In a disparate treatment case, liability depends on whether the protected trait actually *motivated* the employer's decision.

(quoting *Teamsters v. United States*, 431 U.S. 324, 335 n.15 (1977)) (emphasis added). Thus, Respondent's responsibility turns on its motive for acting or failing to act, and not on the motives of Petitioner's estranged husband.

Moreover, the real reason Petitioner lost this case was that the basis for the harassment was not gender/sex as proscribed by Title VII. The Sixth Circuit correctly held that the District Court did not err in instructing the jury that:

> To show that the alleged harassment was based on sex, Plaintiff must prove by a preponderance of the legal evidence that but for the fact of her sex, she would not have been the object of illegal harassment. Harassment is prohibited by Ohio law only if it is based on being male or female. Personal animosity is not the equivalent of sexual harassment and is not proscribed by law.

As the Court of Appeals noted, the jury instruction was consistent with the law, and sufficiently clear to avoid confusion.

Title VII requires discriminatory conduct to be "because of sex," as this Court has so held in its two cases dealing with hostile environment sexual harassment. *See Meritor*, 477 U.S. at 66 ("discrimination based on sex"); *Harris v. Forklift Systems, Inc.*, 114 S. Ct. 367, 371 (1993) ("a

work environment abusive to employees because of their . . . gender"). *Harris* repeatedly emphasized that sexual harassment is a form of disparate treatment sex discrimination. 114 S. Ct. at 370-71 (Title VII violated only if "*discriminatory* conduct was so severe or pervasive that it created a work environment abusive to employees *because of* their . . . gender"; "*discriminatory* intimidation, ridicule and insult"; "[a] *discriminatorily* abusive work environment") (emphasis added). The first two sentences of the instruction, therefore, are verbatim statements from the language of Title VII and this Court's holdings.

The last sentence of the instruction (the one to which Plaintiff's counsel stated he had no objection) is simply a clarification of the "based on sex" requirement. Personal animosity is not the same as intentionally exposing members of one sex "to disadvantageous terms or conditions of employment to which members of the other sex are not exposed." *Harris*, 114 S. Ct. at 372 (Ginsburg, J., concurring). In the context of the unique facts of this domestic relations battle, the instruction was necessary so the jury would not confuse the issues, as it is the discriminatory intent of the employer to create or condone a hostile environment that is crucial, not the intent of the harasser or the character or nature of the tools of harassment. *See Katz v. Dole*, 709 F.2d 251, 256 n.7 (4th Cir. 1983) (burden is on plaintiff to prove intentional employer harassment); *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1485 (3d Cir. 1990) (offensive workplace conduct need not be of a sexual character so long as discrimination is based on gender). The language of Title VII is clear:

> [T]he phrase in Title VII prohibiting discrimination based on sex, in its plain meaning, implies

> that it is unlawful to discriminate against women because they are women and against men because they are men.

Ulane v. Eastern Airlines, 742 F.2d 1081, 1085 (7th Cir. 1984), *cert. denied*, 471 U.S. 1017 (1985).

In this case, the jury listened to almost two weeks of evidence and concluded that despite the sexual content of the posters, Petitioner did not prove harassment "based on sex."[1] No legal error occurred warranting this Court's review.

There is no conflict among the Circuits in the Court of Appeals regarding Title VII's requirement that a plaintiff alleging hostile environment sexual harassment must prove by a preponderance of the evidence that the harassment was "based on" gender/sex. Not one of the cases cited by Petitioner has held otherwise. Moreover, not one case cited by Petitioner has held that a plaintiff may prove an employer responsible for hostile environment harassment merely because the harasser intended to discriminate on the basis of gender/sex. Not one case cited by Petitioner has even mentioned, let alone analyzed, the

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[1] Also the jury found Petitioner did not prove the other elements of a hostile environment sexual harassment claim – she was not subjected to unwelcome sexual harassment in the form of sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; Ford did not unreasonably interfere with her work performance and create an intimidating, hostile or offensive working environment that seriously affected her psychological well-being; Ford did not know/should have known of any harassment; and Ford did not fail to respond adequately and effectively. Special Verdict, Nos. 1, 3, 4, 5 (Appendix).

issue. *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991), discussed the harasser's motivation only in the context of the requirement that the harassment be severe or pervasive enough to create an objectively hostile or abusive work environment. The court cautioned that conduct can be unlawful sexual harassment "even when harassers do not realize that their conduct creates a hostile working environment." 924 F.2d at 879-80. Thus, it is the reasonable person's perspective, not the harasser's, that is applied to determine the severity or pervasity of the conduct. *Harris*, 114 S. Ct. at 370. Nearly every case Petitioner cites specifically requires, as was required in this case, a Title VII plaintiff alleging sexual harassment to prove intentional discrimination "based on" gender/sex. *See Bouton v. BMW of North America*, 29 F.3d 103, 106 (3d Cir. 1994) (hostile environment claim requires proof of severe or intentional discrimination); *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1482 (3d Cir. 1990) (plaintiffs must show they "suffered intentional discrimination because of their sex"); *Katz v. Dole*, 709 F.2d 251, 255 n.7 (4th Cir. 1983) (ultimate burden is on plaintiff to "prove existence and intentional nature of the harassment"); *Rabidue v. Osceola Refining Co.*, 805 F.2d 611, 619-20 (6th Cir. 1986) (relying on EEOC guidelines for requirement that plaintiff prove "she would not have been the object of harassment but for her sex"), *cert. denied*, 481 U.S. 1041 (1987); *McKinney v. Dole*, 765 F.2d 1129, 1138 n.21 (D.C. Cir. 1985) (potential difficulty of proving element that harassment be caused "by the sex of the harassed employee" is "simply an evidentiary problem going to one factual component of the discrimination"); *Carrero v. New York City Housing Authority*, 890 F.2d 569, 578 (2d

Cir. 1989) (plaintiff required to prove the conduct was prompted simply because of the employee's gender); *Hutchison v. Amateur Electronic Supply, Inc.*, 42 F.3d 1037, 1043 (7th Cir. 1994) ("This disparate effect [treating women differently] is the discriminatory element in a hostile environment."); *King v. Board of Regents of the University of Wisconsin System*, 898 F.2d 533, 539 (7th Cir. 1990) ("All that is required is that the action taken be motivated by the gender of the plaintiff."); *Trautvetter v. Quick*, 916 F.2d 1140, 1149-51 (7th Cir. 1990) (must show "*intentional discrimination* based upon an individual's membership in a particular class" . . . "an intent to discriminate *because* of her status as a female and not because of characteristics of her gender which are personal to her"); *Kopp v. Samaritan Health System*, 13 F.3d 264, 269 (8th Cir. 1993) (plaintiff must show "the harassment was based on sex"); *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1413, 1415 (10th Cir. 1987) (relying on *Meritor* and EEOC guidelines for requirement that harassment be "on the basis of sex"); *Jones v. Flagship International*, 793 F.2d 714, 719 (5th Cir. 1986) ("factual inquiry is intentional discrimination"; plaintiff must show "the harassment complained of was based upon sex, *i.e.*, that but for the fact of her sex, the plaintiff would not have been the object of harassment"), *cert. denied*, 479 U.S. 1065 (1987); *Huddleston v. Roger Dean Chevrolet*, 845 F.2d 900, 904 (11th Cir. 1988) (harassment must occur "because of her sex"); *Henson v. City of Dundee*, 682 F.2d 897, 903-04 (11th Cir. 1982) (plaintiff must show that "but for the fact of her sex, she would not have been the object of harassment"); *Steele v. Offshore Shipbuilding, Inc.*, 867 F.2d 1311, 1315 (11th Cir. 1989) ("because of such individual's . . . sex");

Robinson v. Jacksonville Shipyards, Inc., 760 F. Supp. 1486, 1522 (M.D. Fla. 1991) (one element of hostile environment sexual harassment claim is "the harassment complained of was based upon sex").

There is no confusion among the Circuits of the Court of Appeals – all require employer intent to discriminate based on gender/sex.

II. PETITIONER WAIVED HER RIGHT TO OBJECT TO THE LACK OF A MIXED-MOTIVES INSTRUCTION, THERE IS NO CONFLICT IN THE COURT OF APPEALS ON THE INAPPLICABILITY OF SUCH AN INSTRUCTION IN A HOSTILE ENVIRONMENT SEXUAL HARASSMENT CASE, AND PETITIONER WAS NOT PREJUDICED ANYWAY.

The second question presented by Petitioner is whether in a hostile environment sexual harassment case discriminatory intent of the harasser may be proven "using a mixed-motives analysis." Petitioner did not raise this question before the trial court or the Court of Appeals, it was not argued or briefed by either side, and neither court addressed the issue. Neither Petitioner nor Respondent requested a "mixed-motives" jury instruction on the sexual harassment claim, and none was given regarding this claim. The District Court's jury instruction did not force the jury to choose between two motives, of the harasser or Petitioner. It did not mention "motive"; the instruction simply required Petitioner to prove that the alleged harassment was "based on sex." Petitioner's "mixed-motives" question is purely hypothetical, and is not an issue ripe for consideration in this case.

Even if the issue had been raised and not waived, there is no conflict for this Court to resolve because no Circuit of the Court of Appeals has held that a plaintiff may prove intentional hostile environment sexual harassment using a mixed-motives analysis. To the contrary, the Eighth Circuit recently held:

> The mixed-motives analysis is inapplicable to a hostile-work-environment claim. The analysis was designed for a challenge to "an adverse employment decision in which both legitimate and illegitimate considerations played a part."
>
> An employer could never have a legitimate reason for creating a hostile work environment. "Rather, the key issue" in analyzing a hostile-work-environment claim " 'is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.' "

Stacks v. Southwestern Bell Yellow Pages, 27 F.3d 1316, 1326 (8th Cir. 1994) (citations to *Price Waterhouse* and *Harris* omitted). Petitioner cites no case to the contrary. *EEOC v. Farmer Brothers Co.*, 31 F.3d 891 (9th Cir. 1994), advanced by Petitioner, does not conflict with *Stacks*. *Farmer Brothers* merely held that evidence of motive was relevant to establishing sex discrimination in a discharge case. *Id.* at 897.

Likewise, no Court of Appeals has considered, even in passing, the question of whether, notwithstanding the intent of the employer, the intent of a co-worker harasser

may be proven by a mixed-motives analysis. That is because the mixed-motives analysis applies to employer intent, the crucial factor in a Title VII case. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 241-242, 250, 252 (1989) (plaintiff must show that "an impermissible motive played a motivating part in an adverse employment decision"; the "very premise of a mixed-motives case is that a legitimate reason was present"). The cases cited by Petitioner all require *employer* intent to discriminate on the basis of sex. *See Trautvetter v. Quick*, 916 F.2d 1140, 1150 (7th Cir. 1990) (equal protection quid pro quo case); *Huebschen v. Dept. of Health and Social Services*, 716 F.2d 1167, 1172 (7th Cir. 1983) (equal protection quid pro quo case); *Bundy v. Jackson*, 641 F.2d 934, 943, 946 (D.C. Cir. 1981); *Spain v. Gallegos*, 26 F.3d 439, 447-49 (3d Cir. 1994); *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1482 (3d Cir. 1990); *Farmer Brothers*, 31 F.3d at 898 (disparate treatment sex discrimination case); *Burns v. McGregor Electronic Industries, Inc.*, 989 F.2d 959, 964 (8th Cir. 1993).

Finally, the question of whether a legitimate motive is an affirmative defense to liability only arises *after* an employer is found to have had an illegitimate motive. *Price Waterhouse*, 490 U.S. at 258. Petitioner wrongly suggests that the jury should have been permitted to simply choose whether a legal or illegal motive was more likely. (Petition at 15) Petitioner misperceives *Price Waterhouse*. *Price Waterhouse* did not lighten Petitioner's burden of proving that her gender/sex was considered by Respondent when it acted or failed to act. *Id.* at 254-58, 269, 307,

316. Because the jury found no illegal gender/sex harassment of Petitioner was proven, it had no reason to consider whether a legal motive provided an affirmative defense to liability.

III. PETITIONER WAIVED HER RIGHT TO OBJECT TO THE "COMPARABLE EMPLOYEES" JURY INSTRUCTION, ANY INTRA-CIRCUIT CONFLICT IS NOT FOR THIS COURT TO RESOLVE, AND THERE IS NO CONFLICT WITHIN THE SIXTH CIRCUIT ON THIS ISSUE.

Petitioner's third question was not presented to the Court of Appeals for the Sixth Circuit, and thus should not be considered by the Supreme Court.

Furthermore, doubts or conflicts between different panels of a Court of Appeals "should not be the occasion for invoking so exceptional a jurisdiction of this Court as that on certification. It is primarily the task of a Court of Appeals to reconcile its internal difficulties." *Wisniewski v. United States*, 353 U.S. 901, 902 (1957).

Finally, there is no conflict between decisions in the Sixth Circuit regarding the use of comparables in evaluating disparate treatment claims. The trial court relied upon *Mitchell v. Toledo Hospital*, 964 F.2d 577, 583 (6th Cir. 1992), which held that "comparables" in disparate treatment cases must be "similarly-situated in *all respects*." *Pierce v. Commonwealth Life Insurance Co.*, 40 F.3d 796 (1994), requires a plaintiff to prove that "all of the relevant aspects of his employment situation are 'nearly identical' " to those of the employees he claims were treated more favorably. *Id.* at 802. In this case, the trial court recognized that

"[t]o show that she was treated differently than similarly situated male employees, a female plaintiff need not show exact equivalence in situations." The *Mitchell* and *Pierce* tests are not different, but even if they are, Petitioner loses under both tests, because the "comparable employee" Petitioner sought to use was neither "similarly-situated in all respects" nor "nearly identical." There was no error of admissibility of evidence warranting review by this Court.

CONCLUSION

The Petition does not present any "special and important reasons" for this Court to issue a writ of certiorari to review the questions raised by Petitioner. Respondent respectfully requests that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit be denied.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSE ANN ROTHENBUSCH,	:	
Plaintiff,	:	
v.	:	CASE NO. C-1-91-860
FORD MOTOR COMPANY,	:	
Defendant.	:	

SPECIAL VERDICT

We, the jury, unanimously determine our Special Verdict as follows:

ISSUES – SEXUAL HARASSMENT

1. Has the plaintiff, Rose Ann Rothenbusch, proved by a preponderance of the legal evidence that she was subjected to unwelcome sexual harassment in the form of sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature?

YES ___ NO X

2. Has the plaintiff, Rose Ann Rothenbusch, proved by a preponderance of the legal evidence that the harassment complained of was based on sex?

YES ___ NO X

3. Has the plaintiff, Rose Ann Rothenbusch, proved by a preponderance of the legal evidence that the sexual harassment had the effect of unreasonably interfering with her work performance and creating an intimidating,

hostile, or offensive working environment that seriously affected her psychological well-being?

YES ___ NO X

4. Has the plaintiff, Rose Ann Rothenbusch, proved by a preponderance of the legal evidence that defendant, Ford Motor Company, knew or should have known of the sexual harassment?

YES ___ NO X

5. Has plaintiff, Rose Ann Rothenbusch, proved by a preponderance of the legal evidence that Ford failed to respond adequately and effectively when it had notice of the sexual harassment?

YES ___ NO X

ISSUES – SEX DISCRIMINATION

6. Has plaintiff proved by a preponderance of the legal evidence that Ford discharged plaintiff because of her sex?

YES ___ NO X

7. Has plaintiff proved by a preponderance of the legal evidence that when Ford discharged her, Ford intentionally treated her differently than similarly situated male employees because of her sex?

YES ___ NO X

8. Has plaintiff proved by a preponderance of the legal evidence that Ford's reason for terminating

plaintiff's employment was a pretext for its intentional sex discrimination?

YES ___ NO X

9. Has Ford proved by a preponderance of the legal evidence that it would have made the same decision to terminate plaintiff even it if had not considered her sex?

YES X NO ___

ISSUES – RETALIATION

10. Has the plaintiff, Rose Ann Rothenbusch, proved by a preponderance of the legal evidence that her exercise of a protected activity was known to Ford at or before the time Ford transferred her to the third shift?

YES ___ NO X

11. Has the plaintiff, Rose Ann Rothenbusch, proved by a preponderance of the legal evidence that Ford, after knowing that plaintiff engaged in a protected activity, took an employment action adverse to her by transferring her to the third shift?

YES ___ NO X

12. Has the plaintiff, Rose Ann Rothenbusch, proved by a preponderance of the legal evidence that the fact plaintiff engaged in a protected activity was a significant factor in Ford's decision to transfer her to the third shift?

YES ___ NO X

13. Has the plaintiff, Rose Ann Rothenbusch, proved by a preponderance of the legal evidence that the

fact plaintiff engaged in a protected activity was a significant factor in Ford's decision to discharge plaintiff?

YES ___ NO X

14. Has defendant, Ford Motor Company, proved by a preponderance of the legal evidence that its employment decision to transfer plaintiff to the third shift would have been the same even though it considered her engagement in a protected activity a significant factor in making its decision?

YES X NO ___

15. Has defendant, Ford Motor Company, proved by a preponderance of the legal evidence that its employment decision to discharge plaintiff would have been the same even though it considered her engagement in a protected activity a significant factor in making its decision?

YES X NO ___

ISSUES – DAMAGES

16. What amount of money, if any, has Paintiff proved by the preponderance of the legal evidence to be her damages proximately caused by Defendant's discharge of Plaintiff?

Backpay to date	$ 0
Other compensatory damages to date	$ 0
Front pay – (reduce to present worth)	$ 0

Other future compensatory damages (reduce to present worth) $___0___$

17. What amount of money, if any, has Plaintiff proved by the preponderance of the legal evidence to be her compensatory damages proximately caused by Defendant's sexual harassment of Plaintiff?

$___0___$

18. What amount of money, if any, has Plaintiff proved by the preponderance of the legal evidence to be her compensatory damages proximately caused by Defendant's transfer of Plaintiff to the third shift?

$___0___$

19. What amount of money, if any, has defendant proved by a preponderance of the legal evidence plaintiff should have mitigated and/or reduced her damages?

$___0___$

20. Has plaintiff proved by clear and convincing legal evidence that punitive damages should be assessed against the defendant?

YES ___ NO X

21. What amount of money, if any, has plaintiff proved by clear and convincing legal evidence should be assessed against the defendant?

$___0___$

S/ David W. Rush	S/ David Feist
S/ Marilyn A. Melia	S/ Herschell H. Hall
S/ Mary C. Spoerl	S/ John E. Vierling
S/ Ronald J. Willing	S/ Wendell Campbell

Feb. 23, 1993
Date